S.B.CIVIL WRIT PETITION NO.3760/1995

Anar Singh
v.
N.A.B.Phaozee & Noshir Merwanji Rehabilitation Centre for the Blind, Mount Abu & Another.

DATE OF ORDER :: 8th May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. H.S.Sidhu, for the petitioner.
Mr. Durga Ram, for the respondents.

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In precise, the question involved in this petition for writ is that whether a writ in nature of mandamus can be issued by this Court for specific performance of a private contract of service?

The facts, necessary to be noticed for adjudication of this petition for writ, are that by an order dated 29.2.1988 appointment was given to the petitioner as Acting Principal-cum-Mobility Instructor at N.A.B-Pheroze & Noshir Merwanji Rehabilitation Centre for the Blind, Mount Abu w.e.f. 1.3.1988 for a period of one year. Before expiry of the period of one year an offer was made to the petitioner on behalf of the respondent No.1 for appointment as Orientation & Mobility Instructor in the pay scale of Rs.880-1680 subject to the conditions mentioned below:-

“(1)Your appointment is PURELY TEMPORARY in nature, but likely to be considered for probation.

(2)Your services shall be terminated with seven days' notice on either side without assigning any reason.

(3)Your services shall also be terminated as soon as the person appointed for the post by the selection panel of the centre joins the service as per requirement by the Education Department of the Rajasthan Sate Government.

(4)You will not be allowed in undertake any private and remunerative job without prior written permission of the authorities of this institution.

(5)You shall be required to do all the teaching work, office work & centre's other activites.

(6)As per orders of the authorities and also applying your own sincerity and honesty you shall have to work in the interest of the Centre and the Blind Trainees.

(7)You will have no objection it you are entrusted any work in connection with rehabilitation, adjustment, education and welfare of the blind trainees.

(8)All otherrules including services rules and rules regarding leave etc. And the tradition also in force at the centre will be acceptable to you.

> (9)If the above terms are acceptable, please join the duties within seven days of the receipt of this letter. If you fail to join within this specified time, your appointment shall be treated as cancelled."

The petitioner accepted the offer, accordingly, he was appointed on the post concerned and his appointment was also approved by the District Education Officer (Boys), Sirohi under a communication dated 16.12.1989. The Chairman of the Management Committee of the respondent No.1 under a communication dated 3.3.1992 discontinued the petitioner from service being no more required. A complaint was filed by the petitioner before the District Education Officer (Boys), Sirohi being aggrieved by his discontinuation from service under the communication dated 3.3.1992. An appeal was also filed by the petitioner before the District Education Officer (Boys) on 24.3.1992. Before disposal of the appeal he preferred a writ petition before this Court giving challenge to the order dated 3.3.1992 but that came to be rejected on 23.11.1994, however, a Special Appeal (DBCivil Special Appeal No.839/94) giving challenge to the order dated 23.11.1994 was disposed of by Division Bench of this Court by an order dated 10.5.1995 with a direction to the District Education Officer (Boys), Sirohi to decide the appeal preferred by the petitioner on merits without being influenced by the

fact that the petitioner had initiated the proceedings before this Court under Article 226 of the Constitution of India. The District Education Officer (Boys), Sirohi in absence of the petitioner rejected the appeal by considering stance of the respondent No.1. The District Education Officer (Boys) while deciding the appeal as communicated under the communication dated 18.7.1995 held that there were certain complaints from blind girls about ill-conduct and misbehaviour of the petitioner wit them. Being aggrieved by the communication dated 3.3.1992 and its affirmance by the District Education Officer (Boys), Sirohi, this petition for writ is preferred.

The contention of counsel for the petitioner is that although the petitioner's services were temporary and could have been terminated by a simple notice but the termination under the communication dated 3.3.1992 was effected as a consequent to the alleged misconduct and, therefore, sufficient opportunity to defend himself was required to be given to the petitioner and admittedly in the instant matter no such opportunity was given. On basis of the contention above, according to counsel for the petitioner, the decision of the respondent No.1 as communicated under the communication dated 3.3.1992 to discontinue the petitioner from service deserves to be declared void ab-initio.

On asking by the Court, counsel for the petitioner accepted the position that service of the petitioner is an out come of private contract and the same is not at all governed by any statutory provisions. Relevant to note here that the petitioner has claimed protection under the Rajasthan Grant-In-Aid to Non Governmental, Cultural and Physical Educational Institutions in Rajasthan Rules, 1963 and those rules are not statutory in nature but are simple administrative instructions in view of the fact that the petitioner is having no statutory right to be enforced and whatever claim made by the petitioner is nothing but enforcement of a contract of personnel service.

Hon'ble Supreme Court in the case of Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others (AIR 1976 SC 888), held that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee even after having been removed from service can be deemed to be in service against the will and consent of vice against the will and consent of the employer. The only exceptions to the rule above as given by Hon'ble Supreme Court in the case of Executive Committee of Vaish Degree College, Shamli (supra) are that : (i)

where a public servant is sought is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii)where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

In the instant matter no exception is available, however, learned counsel for the petitioner straneously urged that the law laid down by Hon'ble Supreme Court in the case of Executive Committee of Vaish Degree College, Shamli (supra) is no more a good law in light of the judgment of Hon'ble Supreme Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R.Rudani and others [(1989)2 SCC 691]. I do not find any substance in the contention aforesaid for the simple reason that Hon'ble Supreme Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust (supra) as a matter of fact while reiterating the law laid down by Hon'ble Supreme Court in the case of Executive Committee of Vaish Degree College, Shamli (supra) distinguished the facts involved in the case in hand. The discussion made by Hon'ble Supreme Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust (supra) while dealing with the law enunciated in the case of

Executive Committee of Vaish Degree College, Shamli (supra), reads as under:-

> "13.The decision in Vaish Degree College was followed in Deepak Kumar Biswas case. There again a dismissed lecturer of a private college was seeking reinstatement in service. The court refused to grant the relief although it was found that the dismissal was wrongful. This Court instead granted substantial monetary benefits to the lecturer. This appears to be the preponderant judicial opinion because of the common law principle that a service contract cannot be specifically enforced.
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> 14.But here the facts are quite different and, therefore, we need not go thus far. <u>There is no plea for specific performance of contractual service. The respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary payable to them. The question is whether the trust can be compelled to pay by a writ of mandamus?</u>
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> 15.If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was

> managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party."

From reading of the discussion made by Hon'ble Supreme Court referred above, it is apparent that in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust (supra) the issue was with regard to grant of certain pay scales on basis of a right accrued by University Ordinance having a force of statute and not for continuation in service.

In the present matter the petitioner is seeking a mandamus to declare his discontinuation from service by the respondent institution illegal and to put him back in service, that clearly means to enforce a personnel service contract. At the relevant time there was no statutory obligation upon the respondent No.1 to bind itself by the conditions of staff. The institution was getting aid by the government under administrative instructions.

In view of whatever discussed above, I am is of the view that declaration sought by the petitioner in the instant petition for writ by seeking mandamus cannot be issued. The petitioner may claim, in accordance with law, damages by way of filing a civil suit.

Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.